IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 40 OF 2006.
IN
FIRST APPEAL NO. 822 OF 2005.

1(a). Smt.Sharlaben Pandurang Dave and others. ... Applicants.

Versus.

Dinuben alias Dinkala d/o.Pranlal Dadawalla. ... Respondent.

Shri V.S.Kapse for the Applicants.

Shri M.M.Vaishnawa i/by M/s.M.M.Vaishnawa & Co. for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 19th April, 2006.

P.C.:

1. Rule. The learned Advocate appearing for the Respondent waives service. Taken up for hearing forthwith.

2. Decree has been passed against the Applicants directing them to hand over vacant and peaceful possession of the suit premises admeasuring 180 sq.ft. to the Respondent/Plaintiff. The decree is passed after recording a finding that the Applicants are trespassers. As the First Appeal is admitted for final hearing, the decree for possession will have to be stayed. However, decree in terms of clause 2 of the operative part of the decree cannot be stayed. Considering the evidence recorded by the trial Court, the Applicants will have to deposit a reasonable amount as a condition precedent for

grant of stay.

3. Hence the following order is passed:

i) Till final disposal of the First Appeal, the decree for possession shall not be executed subject to compliance with the following conditions:

(a) The Applicants will comply with clause 2 of the operative part of the decree by depositing the entire amount due and payable till 30th April 2006 with the trial Court within a period of 8 weeks from today.

(b) The from May 2006 Applicants will keep on depositing a sum of Rs.500/- per month in the trial Court on or before 10th of every calender month till disposal of the First Appeal.

(c) The Applicants will file an undertaking in this Court within a period of three weeks from today stating therein that the Applicants will not create any third party interest in the suit premises and will not

part with possession thereof in favour of any third party.

ii) On failure to comply with any of the conditions mentioned above, the interim relief will stand vacated without reference to Court.

iii) As and when the amounts are deposited by the Applicants, the trial Court will permit the Respondent to withdraw the same on furnishing security to the satisfaction of the trial Court.

iv) The Civil Application stands disposed of.

Judge.